IN THE HIGH COURT OF JUDICATURE AT MUMBAI

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1681 OF 2000.

Miss. Saraswati Shankar Chavan,
age 37 years, Occ. Nil,
Residing at 32/225,
Ajinkyatara Society, Shivai Nagar,
Pokhran Road No.1, Thane-400606. .... PETITIONER.

....Versus....

1. The Commissioner of Police,
   Navi Mumbai, C.B.D. Belapur,

2. State of Maharashtra, through
   the Secretary, Home Department,
   Mantralaya, Mumbai-400 032. .... RESPONDENTS.

Mr. G.N. Salunke & Mr. H.G. Wakshe, learned Counsel for petitioner,

Mr. C.R. Sonawane, A.G.P. for respondent nos. 1 & 2.

CORAM: F.I. REBELLO & R.V. MORE, JJ.

DATE OF RESERVING JUDGMENT : 24TH JANUARY, 2007.

DATE OF PRONOUNCING JUDGMENT 24th JANUARY,2007.

JUDGMENT (PER R.V. MORE, J.)

Heard the learned Counsel for the parties.

2. By this Writ Petition under Article 226 of the Constitution of India, the petitioner challenges the judgment and order dated 25.1.2000

passed by the Maharashtra Administrative Tribunal, Mumbai Bench in Original Application No. 381/99 as well as the communication dated 15.3.1999 by the second respondent. The petitioner also seeks direction to the respondents to appoint her in clear and permanent post of a Stenographer (Higher Grade) with the respondent no.1. The case of the petitioner in short is that she is a Commerce Graduate lady holding B.Com. Degree. She was born in 1962 and belongs to Scheduled Caste. She also holds all the qualifications required for the Stenographer (Higher Grade) as she has acquired sufficient proficiency in typewriting in English (30 W.P.M.), Hindi (30 W.P.M.), Marathi (40 W.P.M.) and also Marathi Shorthand with 120 W.P.M. She also has knowledge of Computer and Electronic Typewriter along with vast experience in the field of Stenography and held various posts in the various Government authorities in related field.

3. Petitioner's case further proceeds that on the recommendation of the Employment Exchange, she was called for interview for the post of Stenographer (Higher Grade) by the respondents vide letter dated 12.12.1994 with all the necessary documents. She came to be appointed with effect from 15.12.1994. Her contention was that the appointment was on permanent post and not for particular period or on temporary

basis. However, her services came to be terminated on 13.3.1995. Thereafter she was again given fresh appointment for 3 months. This appointment for the period of 3 months continued from 15.3.1995 till 24.12.1997. It is her specific contention that the respondents were well aware that she belongs to the Scheduled Caste and there were Government circulars, particularly dated 19.8.1993 and 22.11.1993 which spelt out the decision of selection of candidates belonging to the Backward Class which were taken out of purview of Selection Board and brought within the purview of Collector of the concerned district. The respondent no.1 sent proposal on 1.7.1996 to the Collector, Thane for initiating process of appointment of the petitioner to the post of Stenographer (H.G.) through District Committee. According to the petitioner, she was kept in dark about this procedure and her services came to be terminated on 24.12.1997 and she was intimated to that effect. Thereafter her representation was also rejected by the respondent no.2 by intimation dated 15.3.1999 pointing out that the post comes within the purview of Regional Selection Board and her name cannot be considered for appointment.

4. The petitioner being aggrieved preferred O.A. No. 381/96 before the Maharashtra Administrative Tribunal, Mumbai Bench

challenging termination and for appropriate directions to the respondents in this regard. By the order which is impugned in this Writ Petition, the M.A.T., Mumbai Bench rejected the petitioner's Original Application and, therefore, the above petition came to be filed.

5. The respondents contested the petitioner's claim on the ground that the petitioner was given temporary appointment, as candidate from Regional Selection Board was not available. The temporary appointment of the petitioner for the period of three months on 15.3.1995 continued till 22.12.1997. Thereafter the petitioner attained the maximum age of 35 years and, therefore, she could not be given further appointment. It was also contended that though the District Collector intimated on 1.7.1996 that the post of Stenographer (H.G.) was vacant and necessary steps to fill up may be taken, the petitioner's application was rejected by the District Collector because drive for the backlog ended and the Collector along with District Selection Committee were no longer competent to consider petitioner's case. On this premise, it was claimed that petitioner is not entitled for any relief under Article 226 of the Constitution of India.

6. We have heard the learned Counsel for the respective parties. We have also gone through the pleadings of the parties. The petitioner's

application was rejected by the M.A.T. on the ground that petitioner was ad-hoc appointee. The learned Member of the M.A.T. also recorded finding that the Government decided to take up drive for filling up post of backlog and entrusted the same to the committee under the District Collector. However, this drive came to an end on 30.6.1996 and, therefore, Collector could not consider petitioner's case as request was made by the Police Commissioner on 1.7.1996 and, therefore, remedy of the petitioner was to approach proper Selection Committee for getting regular appointment. The learned Member also recorded the settled position of law that concession in age for the period for which a person has served as ad-hoc appointee can be granted in regular selection by appropriate authority.

7. It is not disputed that the petitioner holds all the qualifications required for the post of Stenographer (Higher Grade). Her initial appointment was made on recommendation by the Employment Exchange office by local Selection Committee. The petitioner also rendered continuous service with respondent from 1994 to 1997. It is also not disputed that she made several representations to the authority to get herself selected through the District Selection Committee and on the representation dated 14.6.1995, the Director General of Police

directed the Commissioner of Police, Navi Mumbai by the order dated 20.6.1996 to consider the case of the petitioner as special case and regularise her services on the post of Stenographer. It is also clear that the Government undertook drive for filling up post of backlog which was ended on 30.6.1996 and though the petitioner applied on 14.6.1995 her proposal was not sent by the respondents in time. Had the respondents sent the name of the petitioner in pursuance of the abovesaid drive in time in all probability the petitioner's services would have been regularised.

8. We have also gone through the affidavit affirmed by Chandrakant Tukaram Gaikwad on 18.1.2007 on behalf of respondent no.1. In this affidavit, the first respondent has specifically admitted that the General Administration Department, Mantralaya, Mumbai by the Government Resolution dated 13.1.1997 has recommended the names of the candidates who are appointed on the M.P.S.C. post after selecting through the M.P.S.C. by conducting special absorption examination held on 26.3.1995 and out of 107 candidates, services of 27 candidates have been regularised by his office as per the recommendation made by the G.A.D. after selection through M.P.S.C. It is also admitted that all these candidates are initially appointed through the Regional Employment

Exchange between 10.1.1990 to 31.12.1992 and accordingly, their services have been regularised on the M.P.S.C. recommending post after selecting them through the special absorption examination. This affidavit further shows that 3 candidates, namely, A.S. Tandel, A.K. Salgaonkar and Ku. S.D. Dangle appeared for special absorption examination held on 26.3.1995 which was conducted by M.P.S.C. but they were not passed. Accordingly, their services were terminated on 16.12.1997. However, Government on the basis of representation of these candidates have issued Government Resolution dated 31.3.1999 regularising services of these 3 candidates and other similarly situated candidates.

9. Mr. Sonawane, the learned Assistant Government Pleader appearing for the respondents, placed in our hand letter dated 23.1.2007 written by the Deputy Inspector General of Police (Administration) for the Director General of Police. This letter shows that the Government vide G.A.D. notification have finalised recruitment rules, regulating recruitment to the post of English/Marathi Steno-typists, Lower Grade Stenographers, Higher Grade Stenographers in various Government offices in Greater Mumbai including the Police Department on 19.5.1980 and as per the Rule 5(1)(b) appointment on the post of Stenographer (H.G.) shall be made by nomination on the result of competitive examination by the

Commission or by the Board as the case may be for appointment to which a candidate must :

i. have passed the Secondary School Certificate examination or an examination recognised by the Government as equivalent to that examination,

ii. have passed a speed not less than 120 WPM in Shorthand and not less than 40 WPM in English Typewriting or 30 WPM in Marathi typewriting and

iii. have completed 18 years of age and unless already in service of Government must not have completed 30 years of age on the first day of month immediately following the month in which the posts are advertised by the Commission or by the Board.

Provided that the upper age limit shall be relaxed upto 35 years in case of candidates belonging to the Backward Classes.

10. The letter further shows the availability of one vacant post of Scheduled Castes category of Higher Grade Stenographer. However, the appointment to the said post by way of nomination will have to be made on the basis of result of competitive examination to be held by M.P.S.C. It is further stated in this letter that office of Director General has already sent several reminders to the Government for sending the

demand for filling up the said post of Higher Grade Stenographer pursuant to the Rule 5(1)(b) mentioned above and the orders of the Government are still awaited.

11. The above discussion shows that the petitioner is eligible and qualified to be appointed to the post of Stenographer (Higher Grade). So far as the age limit is concerned, we are of the opinion that the petitioner deserves to be granted concession in upper age limit, especially when she worked as an ad-hoc appointee from 1994 to 1997 and thereafter consistently made representations to the respondents. There is also vacancy of one post of Higher Grade Stenographer in Scheduled Castes category. However, in view of the Rule 5(1)(b) of the abovesaid Rules, the petitioner will have to get through the competitive examination held by the M.P.S.C.

12. In the facts and circumstances, we pass the following order :-

i. The Writ Petition is allowed.

ii. The respondents shall forward petitioner's name to Maharashtra Public Service Commission within the period of four weeks from today for the purpose of recruitment under Rule 5(1)(b) of the abovesaid Rules.

iii. The Maharashtra Public Service Commission after receipt of proposal

of the respondent as mentioned above shall hold special absorption examination of petitioner for recruitment to the post of Stenographer (Higher Grade) within the period of six months thereafter.

iv. If the petitioner passes the said examination, the respondents will appoint the petitioner on the vacant post of Stenographer (H.G.) in the Scheduled Castes category.

v. Rule is made absolute in the above terms with no order as to costs.

JUDGE **JUDGE.**

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J.